

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0661-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 0108-0222/US			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>09 February 2009</u> Signature <u>/John J. Oskorep/</u> Typed or printed name <u>John J. Oskorep, Esq.</u>		Application Number 10/667,983	Filed 22 September 2003		
		First Named Inventor Chaudry			
		Art Unit 2618	Examiner Nguyen, Tuan Hoang		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. <u>41,234</u> Registration number _____</p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></td><td style="width: 50%; vertical-align: top;"><p><u>/John J. Oskorep/</u> Signature <u>John J. Oskorep, Esq.</u> Typed or printed name <u>312 222-1860</u> Telephone number <u>09 February 2009</u> Date</p></td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>				<p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <u>41,234</u> Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>	<p><u>/John J. Oskorep/</u> Signature <u>John J. Oskorep, Esq.</u> Typed or printed name <u>312 222-1860</u> Telephone number <u>09 February 2009</u> Date</p>
<p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <u>41,234</u> Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>	<p><u>/John J. Oskorep/</u> Signature <u>John J. Oskorep, Esq.</u> Typed or printed name <u>312 222-1860</u> Telephone number <u>09 February 2009</u> Date</p>				

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Chaudry et al.)	Art Unit: 2618
)	
Serial No.: 10/667,983)	Examiner: Nguyen, Tuan Hoang
)	
Filing Date: 09/22/2003)	Docket No.: 0108-0222/US
)	

Entitled: "METHODS AND APPARATUS FOR PRIORITIZING VOICE CALL
REQUESTS DURING DATA COMMUNICATION SESSIONS
WITH A MOBILE DEVICE"

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The Applicant respectfully submits this *Pre-Appeal Brief Request For Review* in response to the Final Office Action mailed on 14 October 2008, and the subsequent Advisory Action mailed on 05 January 2009, for the above-identified patent application.

I. Summary of Disclosure. According to the present disclosure, a mobile communication device has a user interface, one or more processors coupled to the user interface, and a wireless transceiver coupled to the one or more processors and adapted to communicate via a wireless communication network. The one or more processors operate the wireless transceiver for the communication of user data for a connected data communication service for the mobile device via the wireless network. The one or more processors are further operative to receive, through the user interface during the connected data service, a voice call request for initiating a voice call from the mobile device via the wireless network. In response to the receiving of the voice call request during the connected data service, the one or more processors operate to cause a radio traffic channel between the mobile device and the wireless network which is utilized for carrying the user

data for the connected data service to be torn down, and cause the voice call to be established for the mobile device via the wireless network with use of the wireless transceiver.

II. **Claim Rejections.** In the Office Action of 14 October 2008, the Examiner rejected claims 1-43 of the present application under 35 U.S.C. § 103(a) based on Mishra et al. (U.S. Patent Application Publication No. US2002/0087716) and Bremer et al. (U.S. Patent 7,272,215).

III. **Clear Errors In The Examiner's Rejections.** To properly establish claim rejections under 35 U.S.C. § 103(a), the prior art must teach or suggest each and every limitation of the claims. In the present case, the Examiner makes clear errors in attempting to demonstrate that the relied upon art teaches or suggests each and every limitation of the claims. The Examiner's rejections of the claims fail specifically due to any one of the following clear errors made by the Examiner, as described below:

1. **The Examiner Makes A Clear Error In Failing To Demonstrate That The Relied Upon Art Teaches Or Suggests A Mobile Communication Device Which Causes A Radio Traffic Channel Utilized For Carrying Data For The Connected Data Communication Service To Be Torn Down In Response To Receiving The Voice Call Request As Claimed.**

Claims 1-33 of the application are directed to techniques performed by a mobile device adapted to operate in a wireless network. As such, the mobile device utilizes a radio traffic channel with the wireless network for the communication of user data for a connected data session. As claimed, this mobile device receives, via its user interface, the voice call request for the voice call, and *causes the radio traffic channel which is utilized for carrying data for the connected data communication service to be torn down in response.*

The Examiner utilizes the Mishra et al. reference and the Bremer et al. reference in the rejection of claims. On one hand, the Examiner admits that the Mishra reference fails to teach or suggest the claimed action of "causing a radio traffic channel between the mobile

device and the wireless network which is utilized for carrying the user data for the connected data service to be torn down." See e.g. page 3, paragraph 1 of the Final Office Action of 14 October 2008. On the other hand, the Examiner alleges that the Bremer reference teaches or suggests the claimed action.

Specifically, the Examiner makes reference to paragraph [0013] of Bremer to support his assertion. For example, the Examiner finalizes in the Advisory Action merely that

The Applicant should refer to Bremer reference col. 13 lines 38-47 whereas the Examiner interprets the limitation 'the tearing down of a radio traffic channel by any mobile device.'"

Below is the passage of Bremer in full:

For example, based on calling line ID information that is passed as POTS CLASS signaling, an end user may decide to halt or significantly reduce DSL data communications to answer an incoming call from a phone number associated with a family member. However, an incoming phone call with an unknown calling line ID, which might be associated with a telemarketer, may not cause the end user to halt or diminish DSL data communications by answering the incoming POTS call.

Reading the above, the Examiner is clearly wrong. Bremer does not teach or suggest the tearing down of a radio traffic channel with a wireless network by any mobile device. What is described here in Bremer is a plain old telephone system (POTS) with Digital Subscriber Line (DSL) communications. In Bremer, DSL data communications are temporarily ceased upon detecting an open switching interval to allow on-hook CLASS signaling messages to pass over the subscriber loop. As apparent, the Bremer passage relating to the plain old telephone System (POTS) cannot possibly be reasonably characterized to utilize any radio channel with a mobile device. Even further, the Bremer passage does not teach or suggest any radio traffic channel being torn down ("halt or

significantly reduce DSL data communications” is clearly not the same as “tearing down” of any radio traffic channel) by or within any mobile communication device.

The Examiner must demonstrate that the prior art teaches or suggests each and every limitation of the claims. The failure of the Examiner to demonstrate these claim limitations at all is clear error.

2. The Examiner Makes A Clear Error In Failing To Demonstrate That The Prior Art Teaches Or Suggests A Technique Which Involves Receiving, Through A User Interface Of A Mobile Device, A Voice Call Request For Initiating A Voice Call From The Mobile Device, As Claimed.

Claims 1-33 of the present application are specifically directed to techniques performed by a mobile device adapted to operate in a wireless communication network. The mobile device utilizes a radio traffic channel with the wireless network for the communication of user data for a connected data communication session. As claimed, this mobile device is the same device that *receives, via its user interface, the voice call request for initiating a voice call from the mobile device, and performs the specifically recited acts in response to such receipt.*

The Examiner alleges that the Mishra reference teaches or suggests the recited limitations. However, the Examiner is clearly wrong. Mishra does not teach or suggest the receipt of a voice request via *a user interface of a mobile device for initiating a voice call from the mobile device* the specifically recited actions. As claimed, the voice call associated with the voice call request is initiated from, not to be answered by, the mobile device.

The Examiner refers to paragraphs [0002] and [0009] of the Mishra reference in alleging the existence of these claimed limitations. In paragraph [0002] of Mishra, it is taught that a wireless network (not a mobile station) receives incoming voice call attempts, which are subsequently rejected by the wireless network. The passage reveals that “[w]hile a mobile station is in an active packet data session, the wireless communication network may automatically reject any incoming voice call attempt to the mobile station.” Thus, it is clear that paragraph [0002] of Mishra does not teach or suggest any incoming voice call

request for initiating a voice call from a mobile device which is received at a user interface of the mobile device. There is no initiation of a voice call from a mobile device in the relied upon art.

In paragraph [0009] of Mishra, it is taught that a Mobile Switching Center (MSC) sets up a packet data session with a mobile station for data services. However, what is claimed is the receipt of a voice call request for initiating a voice call – not a data service - for the mobile device. Thus, it is clear that paragraph [0009] of Mishra does not teach or suggest any incoming voice call request for initiating a voice call from a mobile device which is received at a user interface of the mobile device.

Therefore, with respect to either paragraph [0002] or [0009] of Mishra, the Examiner is clearly wrong and this is clear error.

The Examiner must demonstrate that the prior art teaches or suggests each and every limitation of the claims. The failure of the Examiner to demonstrate these claim limitations at all is clear error.

The Applicant respectfully requests the panel of Examiners to consider the present Request and arguments with respect to the clear errors made by the Examiner, and take appropriate action based on the same. Thank you.

Date: 09 February 2009

JOHN J. OSKOREP, ESQ. LLC
ONE MAGNIFICENT MILE CENTER
980 N. MICHIGAN AVENUE, SUITE 1400
CHICAGO, ILLINOIS 60611 USA

Telephone: (312) 222-1860 Fax: (312) 475-1850

Respectfully submitted,

/John J. Oskorep/

JOHN J. OSKOREP

Reg. No. 41,234